



Testimony
Elizabeth Gara, Executive Director
Connecticut Water Works Association
Before the
Commerce Committee
March 16, 2010

Re: HB-5499, An Act Concerning the Promotion of Business

The Connecticut Water Works Association (CWWA), a trade association of municipal, private and regional public water suppliers, **strongly supports HB-5499**, which requires state agencies to more fully consider the impact of proposed regulations on businesses.

Water utilities are highly regulated by state and federal laws and regulations. Many small water systems face significant challenges in maintaining compliance with state and federal laws and standards because they cannot rely on the expertise of in-house staff and consultants to assist them with compliance. In addition, our business customers are increasingly frustrated with the level of regulation required to obtain water service to meet their customer or business needs.

To address these concerns, CWWA supported passage of Public Act 09-19 to strengthen Connecticut's Small Business Regulatory Fairness law. However, our recent experience with the new law indicates that not all agencies are complying with the law and fully considering the impact of proposed regulations on small businesses. We provide the following as an example:

STREAM FLOW REGULATIONS

Small Business Impact Analysis - The Small Business Impact Analysis prepared by the state Department of Environmental Protection relative to proposed stream flow regulations does not meet the requirements of Public Act 09-19. As to the cost and revenue impact on small business, the fiscal note merely says "...After the five-year period it is estimated that some of approximately 140 small businesses may start to be subject to requirements of the regulation, however this number is likely to be further reduced by other flexibility and the regulations. Then the cost to individual small business, if any, will be highly variable dependent upon the adequacy of their current water supplies, water conservation, resources that have been dedicated to maintenances of the system in the past, and the condition of existing infrastructure."

The fiscal note neither identifies nor quantifies the number or type of small businesses affected, e.g., farmers, dam owners, water utilities, recreational businesses, etc. It is unclear how the number of 140 businesses is derived so it impossible to determine whether it is accurate.

The disclosure of the number and nature of the individual small businesses impacted by the proposed regulation is necessary to evaluate the cost and revenue impact, which is absent from the fiscal note. The

note merely states that the impact is “highly variable.” The following two examples illustrate the importance of a thorough fiscal analysis. If, for example the fiscal note disclosed it would likely impact farmers in Litchfield County, the cost of locating alternative water (i.e., wells or public water) or the reduction of crop revenue without the addition of such alternative water could be evaluated. Or, if the fiscal note disclosed an impact to specific water utilities in Middlesex County the cost to obtain alternative water (i.e., wells, interconnection, replacement of infrastructure) could be evaluated to assess the impact on the utility to maintain safe water reserves and/or evaluate whether the utility’s customer base can support the cost of such alternatives.

Fiscal Note - In addition, the fiscal note prepared by DEP relative to the proposed regulations does not accurately reflect the costs of implementing the regulations. DEP’s fiscal note indicates that the proposed regulations may be implemented within available appropriations (see attached). Given recent staff reductions it is difficult to believe that DEP can analyze and classify each watershed basin system in the state within available appropriations. In addition, the fiscal note only reflects agency costs for the next three years although the regulations will require implementation over a fifteen year period. The fiscal note should be required to quantify these long-term costs. The fiscal note also indicates that the cost to other agencies “is expected to be minimal” even though the state Department of Public Health indicates that it would incur costs and has suggested that DEP “update the fiscal note” to reflect these costs.

COSTS NOT REFLECTED IN SMALL BUSINESS IMPACT ANALYSIS OR AGENCY FISCAL NOTE

- Modifications to dams and distribution systems to make required reservoir releases;
- Development of new or expanded well systems and/or reservoirs to meet public water supply needs;
- Projected moratoriums on new water service connections in some communities, which will halt economic development and construction in those areas resulting in the loss of revenues for many communities;
- Staff and Consultant costs needed to pursue new permits for interconnections, new sources of supply, dam modifications;
- Performance of real-time flow monitoring in remote locations;
- Imposition of recurring water use restrictions on customers, which will require local and state enforcement;
- Increases in water rates for residential and business customers as well as the state and municipalities;
- Increased costs to the state Department of Public Health relative to review of water supply plans;
- Increased costs to the state Department of Public Utility Control relative to additional rate cases;
- Increased costs to the state’s towns and cities relative to increased water rates and, for those communities served by water departments, staggering compliance costs.

AGENCY TESTIMONY REGARDING IMPACT ON BUSINESS AND AGENCY COSTS

“There is also no consideration given to the tremendous cost that this struggling industry will have to face. The cost of engineering studies alone could cause a small farm, with a few hands, that has been in a family for generations, to go out of business.”

Phillip Prelli, Commissioner, State Department of Agriculture, Testimony on Proposed Stream Flow Regulations

"The proposed regulations...will also result in tens of millions of dollars of annual water rate increases for customers of the State's public water systems to support the capital and operating costs of compliance, monitoring and reporting requirements... Last, but certainly not least, the effect of these proposed regulations on available water supply and water rates could drastically impact economic development in many communities as they plan future water supply and smart growth policies. This could in turn directly impact economic recovery and job growth as the State tries to recover from the worst economic conditions since the Great Depression."

Mary Healey, Office of Consumer Counsel, Testimony on Proposed Stream Flow Regulations

"Many small businesses including the agriculture industry in Connecticut are in tenuous financial situations and would be unable to absorb significant compliance costs. DECD is concerned that these costs could be an additional strain on their operations...The increase in utility costs for all businesses could make Connecticut less competitive in terms of attracting and retaining businesses."

Joan McDonald, Commissioner, State Department of Economic & Community Development

DPH is willing to work with DEP to update the fiscal note attached to the draft regulation to document the additional staffing resources that will be needed by DPH to implement the Stream Flow Standards and regulations as drafted."

Ellen Blaschinski, State Department of Public Health, Testimony on Proposed Stream Flow Regulations

CWWA would be happy to work with the Commerce Committee to strengthen HB-5499 to ensure that it addresses concerns with the current regulation-making process relative to the impact on business as well as the state budget.

The Connecticut Water Works Association, Inc. (CWWA) is an association of municipal, private and regional public water supply utilities serving more than 500,000 customers, or population of about 2½ million people, located throughout Connecticut.

AGENCY FISCAL ESTIMATE OF PROPOSED REGULATION

AGENCY SUBMITTING REGULATION: DEP

DATE: October 13, 2009

SUBJECT MATTER OF REGULATION: Stream Flow Standards and Regulations

REGULATION SECTION NO.: 22a-141b-1 through 22a-141b-9

STATUTORY AUTHORITY: Section 22a-6 and 22a-141b

OTHER AGENCIES AFFECTED: While involved in the regulation of water, the impact to the Department of Public Health, the Department of Public Utility Control, and the Office of Policy and Management is expected to be minimal during the first three years. In addition, state agencies that own and operate dams or other structures may need to comply.

EFFECTIVE DATE USED IN COST ESTIMATE: October 13, 2009

ESTIMATE PREPARED BY: Robert Hust TELEPHONE: (860) 424-3718

SUMMARY OF STATE COST AND REVENUE IMPACT OF PROPOSED REGULATION

Agency: Department of Environmental Protection

Fund Affected : None

	1st Year <u>2010</u>	2nd Year <u>2011</u>	3rd Year <u>2012</u>
Number of Positions	0	0	0
Personal Services	0	0	0
Other Expenses	0	0	0
Grants	0	0	0
Total State Cost (Savings)	-	-	-
Estimated Revenue Gain (Loss)	-	-	-
Total Net Cost (Savings)	0	0	0

EXPLANATION OF STATE IMPACT OF REGULATION: Persons who own or operate a dam or other structure that impounds or diverts the flow of water in a stream or river system may be required to comply with requirements to provide for in-stream water flows consistent with the flow standards established in the regulation. The Department of Environmental Protection will employ existing staff and other available resources currently dedicated to water management to implement these regulations. The regulations provide phased in requirements over a fifteen-year period that will allow DEP to implement these regulations including development of technical assistance documents, forms and web-based tools to assist with compliance.

Impact on State owned dams is expected to be small since most of those dams are operated in "run-of-river" mode which will not require substantive changes to comply with the new regulations. Impact on other state owned structures that impound or divert water is expected to be small since many may meet other regulatory exemptions and others will have flexible schedules to comply. Compliance verification and enforcement will be accomplished with current staff levels.

In response to the regulations, regulated entities may seek new or modified approvals or permits from the Department of Public Health and the Department of Public Utilities Control. It is anticipated that these requests will be spread out over the fifteen year compliance phase-in period.

EXPLANATION OF MUNICIPAL IMPACT OF REGULATION: The cost impact on municipalities is limited to those municipalities that provide potable water as a municipal service and who, like all other water utilities, may have to comply with the regulations. Flexibility in the regulations has been considered to reduce municipal impacts including: exemptions; less stringent requirements for certain small water users and other types of users; allowing for variances; providing for drought off-ramps; allowing for alternative flow management schemes to replace the presumptive flow standards; providing for public participation opportunities to ensure classifications of streams and rivers and the resulting standards will be reflective of current water use by municipalities; and rolling compliance across the state as stream classifications are established. Development of tools, guidance and assistance will include a web-based stream statistics mechanism and an on-line reporting system which will simplify compliance and reporting requirements. There is a five year period in the regulation before any compliance is required, although municipalities may need to invest in infrastructure improvements during the first five years. Then a flexible implementation schedule from five to fifteen years has been established in the regulation to reduce the impact of full compliance. Although affected municipalities are likely to be already providing some required water reporting and compliance information like all other water utilities, the implementation periods will allow time to assess existing water use, current water supplies, and other management measures in order to comply with the standards. The cost to any individual municipality will be highly variable dependent upon the adequacy of their current supplies, water conservation, resources that have been dedicated to maintenance of the system in the past, the condition of existing infrastructure and already planned upgrades and repairs. There is a potential for financial support in the form of low interest loans or grants through the Drinking Water State Revolving Fund to offset some costs to municipalities in the future. In addition, DEP is specifically seeking comment during the regulation public review process on the social, economic, ecological and technical feasibility of fully complying with certain longer term presumptive standards.

October 13, 2009

**NOTIFICATION FORM
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SMALL BUSINESS REGULATORY IMPACT AND REGULATORY FLEXIBILITY
ANALYSIS**

Title of Regulation Stream Flow Standards and Regulations, RCSA sections 26-141b-1 to 26-141b-9, inclusive

Statutory Authority Section 22a-141b

Contact Person Robert Hust, CT DEP (860) 424-3718

The Regulation

The proposed rules establish flow standards and other regulatory requirements for all river and stream systems in the state. These proposed rules expand the coverage of and eventually replace the existing requirements found in the Minimum Stream Flow Standards and Regulations of the Connecticut Department of Environmental Protection, RCSA sections 26-141a-1 to 26-141a-8, inclusive. The proposed rules develop standards and regulations that balance the needs of humans to use water for drinking and domestic purposes, fire and public safety, irrigation, manufacturing, and recreation, with the needs of fish, wildlife and other biota that also rely upon the availability of water to sustain healthy, natural communities.

Expected Small Business Impact

Some small businesses that own or operate a dam or other structure that impounds or diverts the flow of water in a stream or river system may be required to comply with requirements to provide for in-stream water flows consistent with the flow standards of the regulations.

There is a five-year period in the regulation before any compliance is required, so there will be limited fiscal impact to small businesses from these regulations for the first five years. However, small businesses may need to invest in infrastructure improvements during the first few years. Then a flexible implementation schedule from five to fifteen years has been established in the regulation to reduce the impact of full compliance. These implementation periods will allow time for businesses to assess existing water use, current water supplies, and other management measures to comply. Also the implementation periods will allow the DEP to use existing staff and other available resources currently dedicated to management of stream flows to implement these regulations including develop of technical assistance documents, forms and web-based tools to assist small businesses with compliance, as they are phased in over this period.

Because of flexibility in the regulations including exemptions and less stringent requirements for certain small water users (see below for more information), many related small businesses will not be regulated. After the five-year period it is estimated that some of approximately 140 small businesses may start to be subject to requirements of the regulations, however this number is likely to be further reduced by other flexibility in the regulations. Then the cost to individual small business, if any, will be highly variable dependent upon the adequacy of their current water supplies, water conservation, resources that have been dedicated to maintenance of the system in the past, and the condition of existing infrastructure. In addition, the Agency is specifically seeking comment during the regulation public review process on the social, economic, ecological and technical feasibility of fully complying with certain longer term presumptive standards, including comment from small businesses.

There is a potential for financial support in the form of low interest loans or grants through the Drinking Water State Revolving Fund to offset some costs to small water companies in the future, but this is not available to businesses.

Regulatory Flexibility Analysis

The agency considered the methods listed in section 4-168a(b) to reduce the impact of all or part of the requirements contained in the proposed regulation related to small businesses including: exemptions of all small water withdrawals (less than 50,000 gallons per day); conditional exemptions for other minor withdrawals; providing a five-year period before initial compliance and reporting requirements take effect; providing a ten to fifteen year implementation period before full compliance takes place; providing for rolling compliance across the state as stream classifications are established; allowing for variances; providing for drought off-ramps; allowing for alternative flow management schemes to replace the operational flow standards; providing for public participation opportunities to ensure classifications of streams and rivers and the resulting standards will be reflective of current water use by business; and development of tools, guidance and assistance, including a web-based stream statistics mechanism and reporting system, to simplify compliance and reporting requirements.

